



December 7, 2012

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ex Parte Letter

Re: 2010 Quadrennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 09-182; Amendment of the Commission's Rules Related to Retransmission Consent, MB Docket No. 10-71; and Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 12-228

Dear Ms. Dortch;

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)¹ and the National Telecommunications Cooperative Association (NTCA)² (the Associations) share the concerns recently expressed by representatives of the American Cable Association, Time Warner Cable, and DISH Network (*ACA et. al.*).³ The Associations agree with *ACA et. al.* that coordinated retransmission consent negotiations by separately owned, same-market television stations is a media ownership issue directly implicating local television competition that must be addressed by the Commission in its quadrennial media ownership review. Specifically, the Commission should recognize that the coordination of retransmission consent negotiations by separately owned same-market television stations gives rise to an attributable ownership interest under the Commission's rules.⁴

ACA et al. have submitted extensive record evidence showing that the practice of coordinated negotiations by non-commonly owned top four rated stations in a single designated

¹ OPASTCO is a national trade association representing approximately 420 small incumbent LECs serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve approximately 3 million customers.

² NTCA represents more than 580 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers (LECs) and many of its members provide wireless, cable, Internet, satellite, and long distance services to their communities; each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended.

³ See Notice of Ex Parte Presentation of *ACA et. al.*; *2010 Quadrennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 09-182; and *Amendment of the Commission's Rules Related to Retransmission Consent*, MB Docket No. 10-71 (fil. Nov. 20, 2012) (*ACA et. al.*).

⁴ See OPASTCO reply comments, MB Docket Nos. 09-182, 07-294 (fi. Apr. 3, 2012).

market area are both widespread and increasing.⁵ The Associations' members can affirm that separately owned stations within the same DMA have been coordinating their retransmission consent agreements with other non-commonly owned stations with local multichannel video programming distributors (MVPDs). ACA has reported that by coordinating their retransmission consent negotiations, separately owned, same-market broadcasters are able to command retransmission consent prices that are 21 percent to 161 percent higher than each station negotiating on its own behalf could command.⁶ These price increases demonstrate that coordinated negotiations decreases local television competition, harming both local competition and consumer welfare.⁷

For these reasons, the Associations support the recommendation of ACA *et. al.* that the Commission should explicitly recognize that broadcasters engaging in any of the following practices create an attributable ownership interest:

- Delegation of the responsibility to negotiate or approve retransmission consent agreements by one broadcaster to another separately owned broadcaster in the same DMA;
- Delegation of the responsibility to negotiate or approve retransmission consent agreements by two separately owned broadcasters in the same DMA to a common third party;
- Any informal or formal agreement pursuant to which one broadcaster would enter into a retransmission consent agreement with an MVPD contingent upon whether another separately owned broadcaster in the same market is able to negotiate a satisfactory retransmission consent agreement with the same MVPD; and
- Any discussions or exchanges of information between separately owned broadcasters in the same DMA or their representatives regarding the terms of existing retransmission consent agreements, or the status of negotiations over future retransmission consent agreements.⁸

Doing so will alleviate the competitive and public interest harms engendered by coordinated retransmission consent negotiations on the part of separately owned same-market broadcasters.

⁵ ACA *et. al.*, pp. 1-3. See also comments of OPASTCO, NTCA, the Independent Telephone and Telecommunications Alliance, the Western Telecommunications Alliance, and the Rural Independent Competitive Alliance, MB Docket No. 10-71 (fil. May 27, 2011), pp. 11-12.

⁶ ACA comments, MB Docket Nos. 09-182 and 07-294 (fil. Mar. 5, 2012), p. 9.

⁷ Not only is local competition among broadcasters decreased, but the coordination of retransmission consent negotiations results in higher prices to MVPDs and their subscribers. Moreover, it thwarts the ability of smaller MVPDs, many of whom who make up the Associations' members, to enter the market and offer competitive video services. Similarly, their ability to deploy broadband networks is also impaired. The Commission has long recognized the intrinsic link between a provider's ability to offer video service and to deploy broadband networks. See, *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 5101, 5132-33, ¶62 (2007). See also, OPASTCO & NTCA comments, GN Docket No. 12-228 (fil. Sept. 20, 2012), pp. 14-17.

⁸ See ACA *et. al.*, pp. 3-4.

Respectfully submitted,

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AND ADVANCEMENT OF SMALL
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